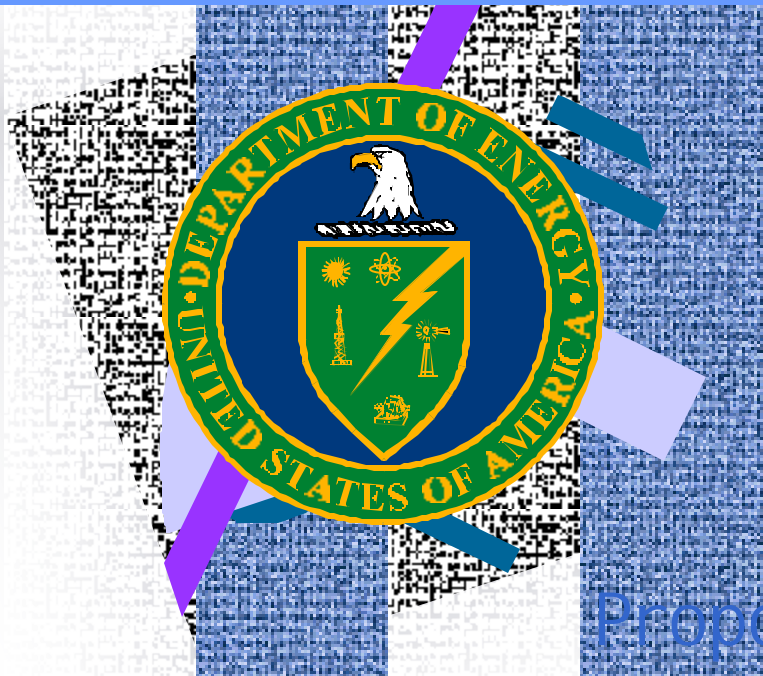


Conditional Payment of Fee Clause



Proposals for Improvement
I SM Conference
May 7, 2002

Historical Origins

- DOE did not wish to award performance fee to contractor with unacceptable ESH&Q record
- This intent is still applicable



A New Consideration

- DOE is full scope safety regulator
- 820 enforcement limited to nuclear – contract action necessary
- Award fee not available for CPI F contracts, therefore:

CPOF Clause is essential part of
DOE's regulatory apparatus

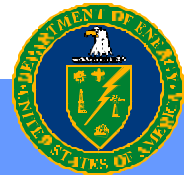
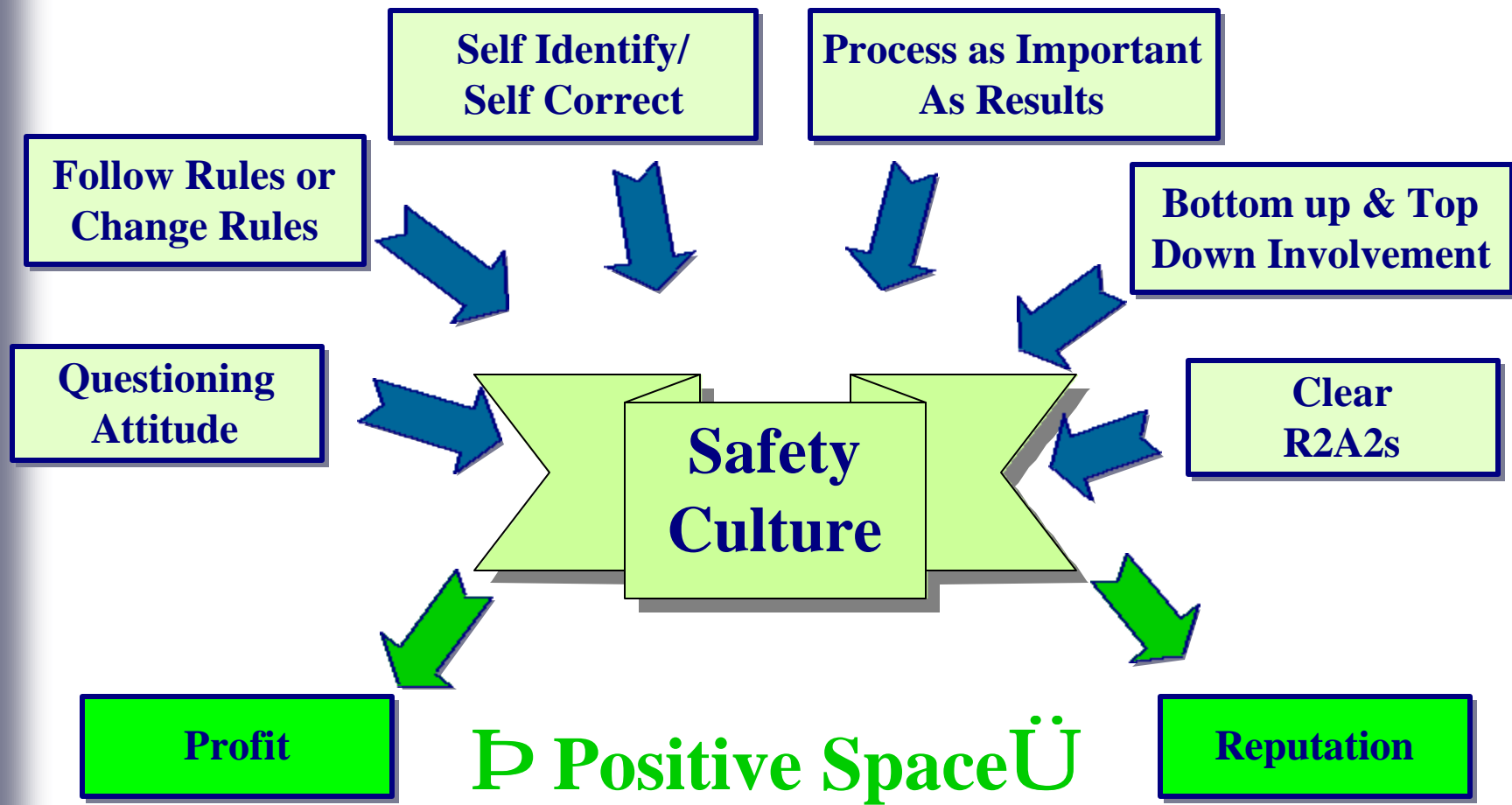


What does DOE want?

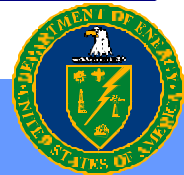
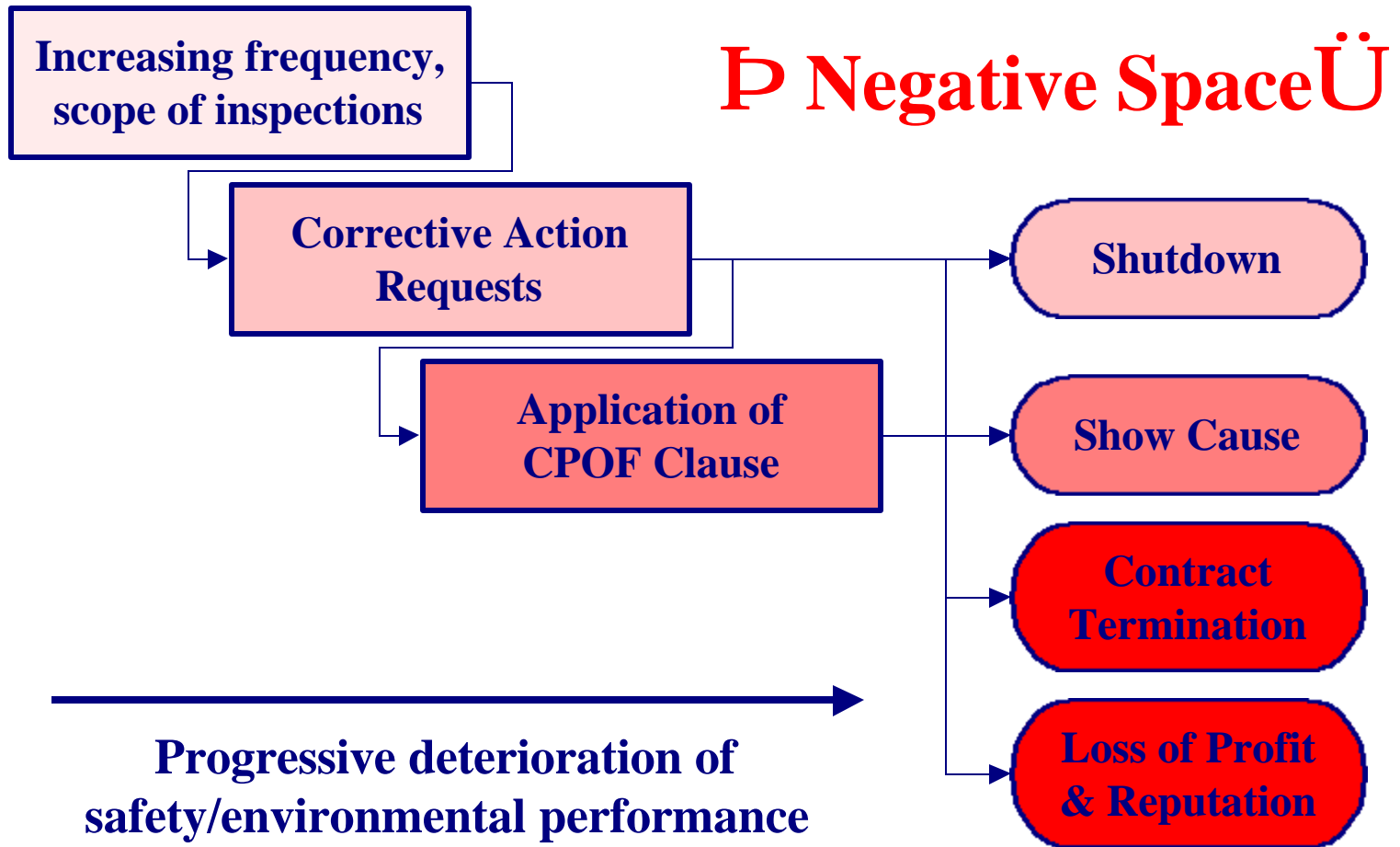
- Since ESH&Q mishaps:
 - Injure people and/or the environment
 - Create adverse programmatic impacts
 - Interfere with DOE's mission
- DOE wants an incident free workplace
- "Safety Culture" is best path to DOE objective – contractor concludes best interest is served by safety record



Positive Safety Culture Attributes



Progressive Contract Actions



Proposed CPOF Criteria

- Promote corrective action
- Differentiate between serious & minor
- Proportion penalties to offenses
- Apply penalties progressively except in egregious cases
- Maximize objectivity, certainty, and uniformity of process
- Encourage development of safety culture



Various Versions of the Clause

1. Current DEAR clause version
2. Rulemaking (RM) version
3. Richland version – this conference

Strengths/weaknesses of each?

What's missing?

How do they measure against criteria

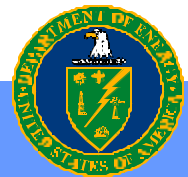
Underscore – pass

italics – fail



DEAR Version Contents

- (a) Failure to obtain approval of I SMS
Failure to achieve minimum performance requirements
- (b) Catastrophic event, e.g. fatality, serious workplace-related injury or illness, loss of control of classified or SNM, or significant damage to environment



DEAR Features

- Fee reductions over “evaluation period” (undefined)
- Managers will consider whether willful misconduct and/or negligence contributed (applied to catastrophic events only)
- Manager will take mitigating circumstances into account *(applied to catastrophic events only)*



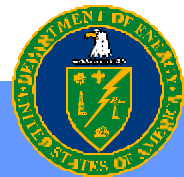
Problems with DEAR Version

- Penalties not proportioned to offenses
- Uncertain & subjective
- Subject to politics
- Definition of catastrophes
- No safety culture incentive



Rulemaking Version Contents

- Introduced levels of severity
- Expanded “minimum performance requirements” to include:
 - Compliance with laws, rules, & directives
 - *Annual ES&H performance requirements*
- *Willful misconduct/negligence deleted*
- 1st degree performance failures tied to failure to comply with SMS



RM Version (cont.)

- Expanded upon catastrophic events:
 - Events leading to Type A accident investigation
 - *Breakdown of SMS creating risk of Type A event*
 - *Non-compliances posing Type A risk*
 - *Failure to notify DOE of imminent danger*
 - *Failure to implement corrective actions following 1st degree failure*



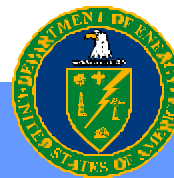
Problems with RM Version

- Penalties not appropriately proportioned to offenses
- Mixes ESH&Q failures with performance failures
- No indication of intent to apply contract remedies progressively
- No incentive to create a safety culture



Proposed Richland Version

- Retain the good features of DEAR & RM versions – omit the others
- Strengthen mitigating factor language to reflect progressive application of DOE contract provisions
- Include cultural aspects in mitigators
 - Performance record
 - VPP status, others?



Specifics – Graded Application

| degree of failure | DEAR † | RM | Richland |
|-------------------|--------|---------|----------|
| 1 st | 0-100 | 51-100* | 0-100** |
| 2 nd | 0-100 | 26-50* | 0-25 |
| 3 rd | 0-100 | 0-25 | 0-10 |

† DEAR does not differentiate degrees

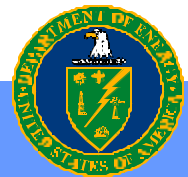
* Mitigation may warrant reduction below range

** Some limitations apply



More Specifics

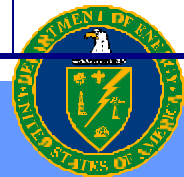
- Include repeat offender provision
- Consider past record of findings and corrective action requests
- Tie all penalties to failure to comply with SMS
- Consider contractor's self-assessment program and record of notification of past problems to DOE



Richland Clause vs. Criteria

| | DEAR | RM | Richland |
|------------------------------------|-----------|----------------|------------|
| Penalty proportioned to offense | No | <i>Partial</i> | Yes |
| Penalties applied progressively | No | No | <i>Yes</i> |
| Objectivity, certainty, uniformity | <i>No</i> | Yes | Yes |
| Encourages safety culture | No | No | Yes |

Red italics indicates area of greatest weakness



Richland Clause

- Conforms to criteria
- S&S not included
- Final fee determination removed
- Failure to obtain I SMS approval deleted
- Minimum performance & cost performance requirements removed
- Available now for informal comment

